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*Attorneys for Defendant
Union Pacific Railroad Company*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JAMES PAUL MOONEY; LAZY COYOTE RV VILLAGE, LLC, on behalf of themselves and all others similarly situated.

Plaintiffs.

V.

UNION PACIFIC RAILROAD
COMPANY, successor to Southern Pacific
Transportation Company; SFPP, L.P.
(formerly known as Santa Fe Pipelines, Inc.,
formerly known as Southern Pacific
Pipelines, Inc.); KINDER MORGAN
OPERATING L.P. "D," and KINDER
MORGAN G.P., INC..

Defendants.

Lead Case No. 2:15-cv-01092-DGC
(consolidated with Case No. 2:15-cv-01380-DGC)

**DEFENDANT UNION PACIFIC
RAILROAD COMPANY'S
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION TO
VACATE AND TEMPORARILY
SUSPEND ENTRY OF COURT'S
FEBRUARY 21, 2017**

1 Union Pacific Railroad Company (“Union Pacific”) respectfully requests that the
 2 Court deny Plaintiffs’ Motion to Vacate and Temporarily Suspend Entry of the court’s
 3 February 21, 2017 Order. (Doc. # 264).

4 Union Pacific objects to Plaintiffs’ request to vacate or hold in abeyance the Court’s
 5 February 21, 2017 Order. Plaintiffs cite no authority for holding the Court’s Order in
 6 abeyance once it has been entered and docketed. *Cf. Briseno v. ConAgra Foods, Inc.*, No. 15-
 7 55727 (9th Cir. Mar. 2, 2017) (staying issuance of mandate under Fed. R. App. P.
 8 41(d)(2)(A) pending application for writ of certiorari). Plaintiffs have not even attempted to
 9 meet the high threshold for rescinding, reconsidering, or modifying the Court’s Order.
 10 Plaintiffs also have not articulated an intervening change of controlling law, the availability
 11 of new evidence, or the need to correct a clear error or prevent manifest injustice. *See Sony*
 12 *Computer Entertainment Am. v. Filipiak*, 406 F.Supp.2d 1068, 1075 (N.D. Cal. 2005)
 13 (describing situations where Court may exercise inherent equitable powers to vacate or
 14 modify an interlocutory order).

15 There is no reason to believe that any action by this Court is necessary to avoid
 16 “piecemeal” or “repetitive arguments” to the Ninth Circuit. Plaintiffs are perfectly capable of
 17 filing a succinct Rule 23(f) petition on the Rule 23(b)(2) and (b)(3) issues resolved by this
 18 Court’s February 21, 2017 Order, and then filing a second Rule 23(f) petition addressing any
 19 remaining issues once this Court enters an order resolving the pending Rule 23(c)(4)
 20 questions.

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1 Dated: March 3, 2017

Respectfully submitted,

2 s/ Andrew Carpenter

3 Joseph Rebein, (Admitted *Pro Hac Vice*)

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23 Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2017, the following document was electronically filed with the Clerk of the Court and served using the CM/ECF system, which will send notification of such filing to the attorney(s) of record at their listed email address(es).

- DEFENDANT UNION PACIFIC RAILROAD COMPANY'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO VACATE AND TEMPORARILY SUSPEND ENTRY OF COURT'S FEBRUARY 21, 2017 ORDER.

/s/ ANDREW CARPENTER
ANDREW CARPENTER